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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 MATTHEW C. CARRINGTON,

12 Petitioner,

13 v.

14 BRUNO STOLE,

15 Respondent.  
16

Case No. C09-5056RBL-KLS

REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED  
*IN FORMA PAUPERIS*

Noted for April 3, 2009

17 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
18 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Red Rock Correctional Center, located in  
19 Eloy, Arizona. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an  
20 application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds  
21 with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the application.

22 DISCUSSION

23 The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a  
24 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the district court has broad discretion  
25 in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),  
26 *cert. denied*, 375 U.S. 845 (1963).

27 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when  
28 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellertorpe*,

1 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.  
2 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),  
3 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

4 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur  
5 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for  
6 *habeas corpus*. In his application, petitioner states that he is presently employed, and that he earns \$42.00  
7 per month. (Dkt. #1). The prison trust account statement he submitted, also shows that during the period  
8 of August 4, 2008, through January 19, 2009, a total of \$815.52 was deposited in petitioner's inmate  
9 account. Petitioner's application, furthermore, does not indicate that there are any persons who are  
10 dependent upon him for support. While the funds to which petitioner has access may not be great, given  
11 that a prisoner's basic needs are provided for while incarcerated and that the filing fee required to proceed  
12 with this action is minimal (\$5.00), the undersigned finds it is not unreasonable to expect petitioner to pay  
13 that fee from those funds.

#### 14 CONCLUSION

15 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the  
16 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,  
17 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**  
18 **thirty (30) days** of the Court's order.

19 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
20 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
21 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
22 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
23 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **April 3, 2009**,  
24 as noted in the caption.

25 Dated this 10th day of March, 2009.

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28 Karen L. Strombom  
United States Magistrate Judge